

to be proved is that the illegal purpose had not been achieved. The question as to whether the parties were in *pari delicto* does not arise.

This appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: R.C. Murugeson; Raja Mohamed Redzuan bin Raja Yaacob.

CHIEF BUILDING SURVEYOR v. MAKHANLALL & COMPANY LTD.

[F.C. (Tan Ah Tah F.J., Winslow & Choor Singh JJ.)
May 22, 1969]

[Singapore — Federal Court Appeal No. Y50 of 1968]

Administrative law — Certiorari — Order of magistrate's court under section 63(4) of the Local Government Integration Ordinance, 1963 — Order to demolish building — Whether audi alteram partem rule applicable to proceedings before magistrate — Certificate of Building Surveyor not in compliance with the Ordinance — Requirement of natural justice — Locus standi of occupier of building.

Local Authority — Demolition order — Prohibition and closing orders — Natural justice — Local Government Integration Ordinance, 1963, s. 63(4) and (5).

This was an appeal against the order of *certiorari* made by the learned Chief Justice ([1969] 1 M.L.J. 36). The learned Chief Justice held that the magistrate's court deciding the matter under section 63 of the Local Government Intergration Ordinance, 1963 was under a duty to act judicially; that the certificate of the chief surveyor was not a certificate as required under the Ordinance; and that the magistrate's court acted in excess of its jurisdiction in making the two orders. On appeal it was argued *inter alia* that the defect in the certificate of the chief building surveyor was not fatal and that the magistrate's court was under no duty to act judicially.

Held, dismissing the appeal: (1) the orders made by the magistrate's court in this case were invalid on two grounds: first, because the magistrate had acted in excess of jurisdiction, and secondly, because in making the order *ex parte* without giving the person affected by the order an opportunity to be heard, he failed to comply with the requirements of natural justice;

(2) there was a breach of the rules of natural justice on the part of magistrate's court in that it did not give a hearing to the owner of the building before making an order under section 63(4) of the Ordinance. As this order empowered the chief building surveyor to demolish the building, the demolition if carried out would have deprived the owner of his property without his having been heard and this is contrary to the principle repeatedly recognised, and reaffirmed recently by the Judicial Committee in *Durayappah's case*,⁽³⁾ that no man is to be deprived of his property without his having an opportunity of being heard, unless of course there are express words in the statute authorising deprivation without notice;

(3) as the respondent company had a direct and substantial interest in the matter and the two orders made by the magistrate's court were nullities, the respondent company clearly had *locus standi* to challenge the said orders.

A Cases referred to:—

- (1) *Cooper v. Wandsworth Board of Works* (1863), 14 C.B.N.S. 180; 143 E.R. 414.
- (2) *Hopkins v. Smethwick Local Board of Health* (1890), 24 Q.B.D. 712.
- (3) *Durayappah v. Fernando* [1967] 2 A.C. 337; [1967] 2 All E.R. 152; [1967] 3 W.L.R. 289.
- (4) *Ridge v. Baldwin* [1964] A.C. 40.
- (5) *Nakkuda Ali v. Jayaratne* [1951] A.C. 66.

FEDERAL COURT.

Lee Kim Siang (State Counsel) for the appellant.

C *Sachi Saurajen* for the respondent.

Cur. Adv. Vult.

Choor Singh J. (delivering the judgment of the court): This is an appeal from a judgment of the High Court granting an order of *certiorari* to quash two orders made by a magistrate's court, an order made on the 4th day of October, 1967 under section 63(4) of the Local Government Integration Ordinance, 1963 ("the Ordinance") authorising the chief building surveyor either to demolish the building known as 19/20 Malacca Street, Singapore, or to take such steps as appear to the chief building surveyor to be necessary to make the building secure, and another order of the same magistrate's court made on the 30th day of October, 1967 under section 63(5) of the Ordinance prohibiting the said building from "being used for human habitation."

The facts are not in dispute. The respondent company is a tenant of the ground floor of No. 20 Malacca Street, where it carries on business as importers, exporters and commission agents. It has been in occupation of these premises for more than 25 years. On the 4th October, 1967 the chief building surveyor, Singapore, swore a complaint before the ninth magistrate's court, Singapore, alleging that due to structural defects the building in question was in danger of collapse. Attached to the complaint was a certificate of the assistant building surveyor regarding the structural condition of the building. It was in the following terms:—

"I, the undersigned, hereby certify that I have inspected on 3.10.67 building No. 19/20 Malacca Street, known as Namazie Building which is situated at the junction of Malacca Street and a back lane.

I have found that the building is in danger of collapse due to structural defects in the structure — there are big cracks from five-foot-way level to almost roof level in the East wall; rear part of West wall is cracked, out of plumb and bulging towards the back lane; structural cracks in some beams; a good number of floor joints of 2nd floor are sagging; one column on the 2nd floor is out of plumb.

Immediately adjacent to the back wall of the Namazie Building there is a free standing wall ex-

tending the full height of the Namazie Building. This wall is also in danger of collapse.

Sgd. Tan Hock Meng
Assistant Building Surveyor."

On receipt of the complaint, the magistrate's court, purporting to act under section 63(4) of the Ordinance, made the first order complained of and on the 30th October, 1967, on the application of the chief building surveyor, the magistrate's court made the second order. Both orders were made *ex parte* and the owner of the building was not given an opportunity of being heard in respect of the first order nor were the occupants in respect of the second. Armed with the order of 30th October, 1967 and acting under section 106(14) of the Ordinance, the chief building surveyor served notice on the respondent company calling upon it to vacate the premises. Upon receipt of this notice, the respondent company moved the High Court for an order of *certiorari* to quash the two orders made by the magistrate's court. The High Court held that the magistrate's court was under a duty to act judicially in deciding whether a situation existed which empowered it to make an order under the latter part of subsection (4) of section 63; that the certificate of the chief building surveyor was not a certificate as required by section 63(4); that the magistrate's court acted in excess of its jurisdiction in making the two orders which the applicants sought to quash by *certiorari*; and that the order *nisi* must therefore be made absolute. It is against this decision of the High Court that the appellant now appeals to us.

The relevant sections of the Ordinance provide as follows:—

"63(4) Notwithstanding the provisions of subsections (1), (2) and (3) of this section where the chief building surveyor is of opinion that immediate steps ought to be taken to prevent a building or anything affixed thereon, from falling down, he may so certify to a magistrate's court, and a magistrate's court, on receipt of such a certificate, shall make an order authorising the chief building surveyor either to demolish the building or to take such other steps as appear to the chief building surveyor to be necessary to render the building secure and the expenses thereby incurred shall be paid by the owner of the building.

(5) Where an order is made under the provisions of subsection (4) of this section in respect of any building which is occupied, the court shall on the application of the chief building surveyor make an order prohibiting the building from being used for human habitation and the provisions of subsection (14) of section 106 of the Ordinance shall apply as if such order were a closing order made under that section.

106(14) Where a closing order has been made with respect to any dwelling-house, the director shall serve notice of the order on every occupier of the dwelling-house and within such period as is specified in the notice not being less than seven days (save in case of immediate danger) after the service of the notice the order shall be obeyed by him and he and his

family shall cease to inhabit the dwelling-house, and in default he shall be liable on conviction to a fine not exceeding fifty dollars a day during the disobedience to the order, and the court shall, upon application by the director, make a summary order for his ejection and the same may be carried into effect by any police officer or officers:

Provided that the owner shall make to every tenant whose tenancy has not been lawfully determined such reasonable allowance, if any, on account of his expenses in removing as a court may allow or order, and such allowance shall be recoverable in a summary way before a magistrate's court."

Counsel for the appellant submitted that although the certificate of the chief building surveyor did not certify that he "was of the opinion that immediate steps ought to be taken to prevent the building from falling down" the failure to use such words was not fatal; that the chief building surveyor can convey his opinion by implication; that his opinion may be gathered from the surrounding circumstances; that it was not obligatory on the part of the chief building surveyor to use express words; that it was not the bare opinion of the chief building surveyor that was of paramount importance but the grounds upon which his opinion was based which were of crucial importance; that the chief building surveyor had stated these grounds and his opinion could be inferred therefrom; and that the chief building surveyor by stating the grounds had made it much clearer, why immediate steps should be taken, than by merely expressing a bare opinion that immediate steps ought to be taken to prevent the building from falling down. Counsel argued that the chief building surveyor's certificate though omitting the "magic words" was nonetheless effective and sufficient; that the magistrate's court by acting on it had not acted in excess of its jurisdiction and that the appeal must therefore be allowed.

Counsel for the appellant submitted further that the magistrate's court was under no duty to act judicially. Counsel conceded that the construction of a statute was a matter of law but that was he submitted a matter totally different and divorced from the concept of a duty to act judicially, which duty, he argued, must exist for *certiorari* to apply. Counsel submitted that it was the nature of the process that mattered; that the court must look at the process and see if the magistrate's court was obliged to hear both parties; that in this case in view of the language of section 63(4) of the Ordinance, the magistrate's court was under no duty to hear the respondent company; that that was clear from the language used because on receipt of the chief building surveyor's certificate the magistrate's court was obliged to make an order; that the magistrate's court had no option in the matter; that all he (the magistrate) had to do was to look at the certificate

and if it was in order he was obliged by law to make an order. Counsel submitted that if a magistrate's court made an order under section 63(4) of the Ordinance on a defective certificate, the remedy of a person aggrieved would be to apply for a declaration that the order was void and of no effect; that *certiorari* would not lie in such circumstances; and that this was another reason why the appeal should be allowed.

Counsel for the respondent company submitted that the certificate of the chief building surveyor did not comply with the requirements of section 63(4) of the Ordinance; that there is a distinction between a case where immediate steps must be taken to prevent a building from falling down and a case where the building is not in imminent danger; that the chief building surveyor not having certified that he was of the opinion that immediate steps ought to be taken, the certificate was bad in law; that the magistrate's court in acting on such a defective certificate acted in excess of jurisdiction and that the two orders made by the magistrate's court were therefore rightly quashed by the High Court.

Counsel for the respondent company submitted further that the magistrate's court was under a duty to act judicially; that this duty arose from the nature of the power vested in the magistrate's court and also from the effect of the exercise of this power on any person adversely affected and that the duty to act judicially can exist even in the absence of express words requiring the court to act judicially. Counsel cited *Cooper v. Wandsworth Board of Works*⁽¹⁾ and *Hopkins v. Smethwick Local Board of Health*⁽²⁾ in support of this submission.

There was a further submission by counsel for the respondent company. He submitted that the duty of the magistrate's court to act judicially was apparent from a true construction of section 63(4) of the Ordinance; that this subsection did not contemplate an *ex parte* order; that it should not be read as excluding a right to be heard; that if it had been the intention of the legislature to enable the magistrate's court to make an *ex parte* order, the legislature would have so provided as it did in section 146(1) of the Ordinance; that the legislature had thought fit to take the discretion from the hands of the chief building surveyor and place it in the hands of a magistrate's court; that the magistrate's court has a discretion to make one of two orders i.e. either an order authorising the chief building surveyor to demolish the building or an order to take such other steps as appear to the chief building surveyor to be necessary to render the building

A secure; that when exercising this discretion the magistrate's court is carrying out a judicial function; that otherwise the magistrate's court would be a mere "rubber stamp"; that in view of the gravity of a demolition order the magistrate's court is entrusted with the task of keeping a check on the excesses of the chief building surveyor; that the magistrate's court has to apply the provisions of section 63(4) to the material placed before it; that the magistrate's court in examining the said material and in applying section 63(4) to it performed a judicial function; that the magistrate's court, in not having heard the respondent company was in breach of an implied duty to observe the *audi alteram partem* rule; that the two orders made by it were bad in law and that they were therefore rightly quashed by the High Court.

D There was yet another submission by counsel for the respondent company. He submitted that the magistrate's court in the order made on 4th October, 1967 authorised the chief building surveyor either to demolish the building or to take such steps as appeared to the chief building surveyor to be necessary to make the building secure; that the said order was invalid because the magistrate's court had delegated the discretion vested in it to the chief building surveyor; that such discretion must be exercised personally; that the order made by the magistrate's court was irregular and void; that the consequential order made on the 30th October, 1967 was also void and that therefore both orders were rightly quashed by the High Court.

In reply, counsel for the appellant submitted that although *Cooper's* case was still good law, it was applicable only when two conditions were fulfilled, first, if and when the language of the statute was not clear, and secondly, if a discretion was given to the person exercising the power; that in the present case the language of section 63(4) was very clear; that there was no doubt at all as to the function of the magistrate's court; that it was the chief building surveyor who exercised a measure of control and had a discretion whether or not to demolish the building; that *certiorari* could lie against the chief building surveyor in the exercise of that discretion but not against the magistrate's court which was performing a purely administrative act under section 63(4) of the Ordinance; and that therefore the High Court was wrong in quashing the two orders made by the magistrate's court.

In our opinion, the question of substance in this appeal is whether there should have been a hearing before the power to make an order under section 63(4) could have been validly

exercised by the magistrate's court. The answer to this question must depend ultimately upon an examination of the provisions of this subsection. It will be seen that there is no statutory requirement for a hearing before the magistrate's court. But the Privy Council has decided in *Durayappah v. Fernando* ⁽³⁾ that this is not conclusive of the question. In that decision the Judicial Committee followed the House of Lords in *Ridge v. Baldwin* ⁽⁴⁾ and departed from its own earlier decision in *Nakkuda Ali v. Jayaratne* ⁽⁵⁾ in holding that a statutory power does not have to be classifiable as "judicial" or "quasi-judicial" before the rules of natural justice are applicable and reaffirmed the proposition of Byles J. in *Cooper v. Wandsworth Board of Works* ⁽¹⁾ that "although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature." The decision in *Durayappah's* case is most welcome not only in Singapore, but also, we feel certain, in all Commonwealth jurisdictions in which the Privy Council is the final court of appeal.

In *Durayappah's* case the Judicial Committee made it clear that nothing external to the power, no "super-added" duty to act judicially, would be necessary for the rules of natural justice to be applicable or for *certiorari* to be available. In what circumstances, then, must a hearing be given before a power may be validly exercised? In avoiding any general formulation, Lord Upjohn who delivered the judgment of the Judicial Committee in *Durayappah's* case observed, at page 295 ([1967] 3 W.L.R.) :—

"In that case (*Ridge v. Baldwin*) no attempt was made to give an exhaustive classification of the cases where the principle *audi alteram partem* should be applied. In their Lordships' opinion it would be wrong to do so. Outside wellknown cases such as dismissal from office, deprivation of property and expulsion from clubs there is a vast area where the principle can be applied only on most general considerations. . . . In their Lordships' opinion there are three matters which must always be borne in mind when considering whether the principle should be applied or not. These three matters are: first, what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of injustice. Secondly, in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved what sanctions in fact is the latter entitled to impose upon the other. It is only upon a consideration of all these matters that the question of the application of the principle can properly be determined. . . ."

The most important aspect of *Durayappah's* case is that the Judicial Committee in that case considered the effect of a breach of the *audi alteram partem* rule on a decision and held that such a decision would be voidable and proceeded

A to consider who would be entitled to challenge a decision alleged to be voidable. The Judicial Committee held that in respect of a voidable decision, only the aggrieved party, that is, the person against whom the decision was made, would have *locus standi* and went on to hold that the applicant before them, the Mayor of Jaffna, did not have *locus standi*. Lord Upjohn stated, at page 300 ([1967] 3 W.L.R.) :—

B " . . . Being voidable it was voidable only at the instance of the person against whom the order was made, that is the council. But the council have not complained. The appellant was not doubt mayor at the time of its dissolution but that does not give him any right to complain independently of the council. He must show that he is representing the council or suing on its behalf or that by reason of certain circumstances, such, for example, as that the council could not use its seal because it is in the possession of the Municipal Commissioners, or for other reasons it has been impracticable for the members of the council to meet to pass the necessary resolutions, the council cannot be the plaintiff. Had that been shown then there are well-known procedures whereby the plaintiff can sue on behalf of himself and the other corporators making the council a defendant and on pleading and proving the necessary facts may be able to establish in the action that he is entitled to assert the rights of the council. That, however, is not suggested in this case. The appellant sets up the case that as mayor he is entitled to complain but as such he plainly is not. If the council is dissolved the office of mayor is dissolved with it and he has no independent right of complaint, because he holds no office that is independent of the council. . . "

C Though this passage contains what may appear to be a technical and restrictive approach to the question of *locus standi* for the purposes of challenging a decision alleged to be voidable, it is nevertheless a decision which is binding on this court.

D Before considering the question of the *locus standi* of the respondent company it is desirable that we should deal with the submissions that have been made to us, and consider whether or not the two orders are a nullity or at least voidable. If they are not, then the question of the respondent company's *locus standi* does not arise and the appeal must succeed.

E We do not accept the submission of counsel for the respondent company that the magistrate's court must under section 63(4) of the Ordinance make one of two orders, either an order authorising the demolition of the building or an order authorising the chief building surveyor to take such steps as appear to him necessary to make the building secure. In our opinion the language of this subsection is clear. The magistrate's court has not been vested with a discretion to decide whether to make an order authorising demolition or to make one empowering the chief building surveyor to take such other steps as appear to him necessary to render the building secure. Having regard to the position of the word "either" in the sub-

section, it is abundantly clear that the magistrate's court is empowered to make one order only and that is an order "authorising the chief building surveyor either to demolish the building or to take such other steps as appear to the chief building surveyor to be necessary to render the building secure." The discretion whether to demolish or to repair is vested in the chief building surveyor. The magistrate's court has nothing to do with the exercise of that discretion.

We agree with the learned Chief Justice who in the High Court dealt with the motion to quash the orders made by the magistrate's court that the certificate of the chief building surveyor did not comply with the requirements of section 63(4) of the Ordinance. There is a clear distinction between a building that is in danger of collapse and a building that is in imminent danger of collapse, and the failure of the chief building surveyor to state in the certificate that he was "of the opinion that immediate steps ought to be taken to prevent the building . . . from falling down" was fatal to his application for an order under this subsection. The magistrate's court, in our opinion, could not validly exercise its powers under this subsection on such a defective certificate of the chief building surveyor and in acting on such a certificate and making the order applied for, the magistrate's court exceeded its power and therefore acted in excess of jurisdiction.

Counsel for the appellant submitted that each of the two orders made by the magistrate's court was a purely administrative act and therefore *certiorari* would not lie against the magistrate's court. In view of the authoritative opinion expressed by the Judicial Committee in *Durayappah's* case that a statutory power does not have to be classifiable as "judicial" before the rules of natural justice are applicable and for *certiorari* to be available, we do not consider it necessary to decide whether or not the two orders were administrative acts. But if it were necessary for us to do so, we would have no hesitation in holding that both orders were judicial acts because the order under section 63(4) was clearly an act done by a court of law upon consideration of facts and gravely affecting the property and rights of others and the order under section 63(5) entailed a penalty on persons who disregarded it. Furthermore, it seems to us that the two orders made by the magistrate's court are inseparable from the chief building surveyor's certificate. Before issuing his certificate the chief building surveyor had to be of the opinion that immediate steps ought to be taken and in forming that opinion it is clear that he was acting in a quasi-judicial capacity. Again, the first order empowered the chief

A building surveyor either to demolish or to repair the building and it is clear and indeed it is conceded by counsel for the appellant that in deciding which course to take, the chief building surveyor would be acting in a quasi-judicial capacity. It is therefore abundantly clear that the two orders made by the magistrate's court were inextricably intertwined with the quasi-judicial functions of the chief building surveyor and were therefore judicial acts.

In cases of this kind it is the function of the court to examine the steps taken in reaching the decision and to decide whether in the course of those steps, there was "a real substantial miscarriage of justice." We hold that there was a breach of the rules of natural justice on the part of the magistrate's court in that it did not give a hearing to the owner of the building before making an order under section 63(4) of the Ordinance. As this order empowered the chief building surveyor to demolish the building, the demolition if carried out would have deprived the owner of his property without his having been heard and this is contrary to the principle repeatedly recognised, and reaffirmed recently by the Judicial Committee in *Durayappah's* case, that no man is to be deprived of his property without his having an opportunity of being heard, unless of course there are express words in the statute authorising deprivation without notice. We find there are no such words in section 63(4) of the Ordinance. It was argued that the words "and a magistrate's court, on receipt of such a certificate shall make an order" made it mandatory on the part of the magistrate's court to make an *ex parte* order. We are unable to accept this submission. The use of the word "shall" in the context in which it appears, does not, in our opinion, for the reasons which we have already stated, authorise any departure from the duty to act judicially.

We hold therefore that the order made by the magistrate's court on the 4th October, 1967 was invalid on two grounds: first, because the magistrate acted in excess of jurisdiction and secondly, because he failed to comply with the requirements of natural justice. Consequently the second order which was based on the first order was also invalid.

The practice is well established that where the application is by a person aggrieved, and not merely by a member of the public, the writ of *certiorari* will always issue where sufficient grounds exist, but the decision in *Durayappah's* case appears to indicate that the applicant must show *locus standi*. Therefore, the crucial question in this appeal is whether the respondent company, which has a legitimate interest in this

matter, has *locus standi*, and is entitled to impeach the two orders made by the magistrate's court.

The order made by the magistrate's court under section 63(4) of the Ordinance was made on the certificate of the chief building surveyor which was not in accordance with the requirements of section 63(4). The magistrate's court had therefore no power to make the order which it did. The magistrate clearly acted in excess of jurisdiction and the order made was therefore invalid, of no effect and a complete nullity. Consequently the second order made under section 63(5) which was based on the first order, was also a nullity and so was the statutory notice which followed the second order. As the respondent company had a direct and substantial interest in the matter and the two orders made by the magistrate's court were a nullity, the respondent company clearly had *locus standi* to challenge the said orders because when an order or a decision is a nullity advantage of it can be taken by any person having a legitimate interest in the matter. This is clear from the observations of Lord Upjohn in *Durayappah's* case, at page 300 ([1967] 3 W.L.R.).

Even if the two orders made by the magistrate's court were not a nullity but were merely voidable it is our view that the respondent company had *locus standi* to impeach them. It is true that the first order made by the magistrate's court on 4th October, 1967 was clearly an order made against the owner of the building as it was addressed to him and therefore was voidable only at the instance of the owner. But there was the second order made on the 30th October, 1967 which though not addressed to any named person was an order made against all the occupants of the building, including the respondent company, because it prohibited the building from being used for human habitation. This order was served on the respondent company and the chief building surveyor by serving the statutory notice under section 106(14) of the Ordinance on the respondent company calling upon it to vacate the building, was seeking to enforce this second order. And the respondent company was legally bound to obey the second order. In our opinion the certificate of the chief building surveyor, the two orders made by the magistrate's court and the statutory notice, must all be considered together because they were part and parcel of the same transaction. They cannot be separated or considered in isolation for purposes of *locus standi* because they are essential prerequisites to the obtaining of vacant possession of the building by the chief building surveyor. In our opinion the respondent company had not only a substantial interest in impugning the two orders but also *locus standi* within the meaning of

A *Durayappah's* case, because as already stated, the order prohibiting the building from being used for human habitation was an order made against it and enforceable against it.

B The respondent company was the lawful tenant of the ground floor of the building and its tenancy was protected by the Control of Rent Ordinance. Its legal rights were undoubtedly infringed by the making of the two orders by the magistrate's court because in the event of the building being demolished, which was a possibility which could not be ruled out, the respondent company would be deprived of a legal right, namely, the right to enjoy the use of the ground floor of the building and to remain in possession thereof unfettered and without interference. In our opinion, whether the two orders made by the magistrate's court were a nullity or merely voidable the respondent company had the right and the *locus standi* to apply for the quashing of the two orders.

For these reasons, we hold that the two orders made by the magistrate's court were rightly quashed by the High Court. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Drew & Napier.*

EE YEE HUA v. PUBLIC PROSECUTOR

[R.Cr.J. (Winslow J.) May 23, 1969]

[Singapore — Criminal Revision No. 2 of 1969]

Criminal Law and Procedure — Revision — Withdrawal of charge by the Deputy Public Prosecutor — Offence not triable by magistrate — Whether magistrate can make an order of discharge amounting to acquittal — Whether complainant can be granted audience at hearing of petition for revision — Criminal Procedure Code (Cap. 132), ss. 311 and 312.

G In this case a complaint was laid by the petitioner before a magistrate in respect of an offence under section 323 of the Penal Code and after the matter had been referred to the police for investigation, the magistrate issued a summons against one Fong Kei Kwong under section 325 of the Penal Code, which according to H Schedule C of the Criminal Procedure Code is not triable by a magistrate. When the case came up for mention before a magistrate, the deputy public prosecutor informed the court that the prosecution had instructions to withdraw the charge. The learned magistrate discharged the accused, the discharge amounting to an acquittal. The petitioner thereupon applied to the court for revision of the summons. A preliminary question was raised as to whether a complainant such as the petitioner should be granted audience at the hearing of the petition for revision in the exercise of the court's discretion.

I Held: (1) in the circumstance of this case the court would exercise its discretion to hear the complainant or his counsel on his behalf and counsel for the complainant should be given permission to represent the complainant on the revision;